SUMMARY OF EXAMINER INTERVIEW

Applicants would like to thank Examiners Myhre and Pouncil for participating in an interview on April 2, 2009 with Applicants' representative Aaron Reed. Distinctions between the overall methods followed by the invention and that of the cited art were discussed. The Examiners noted that further comparison and investigation of the cited art with respect to the application would be necessary to determine whether the Applicants' remarks traverse the cited art.

REMARKS

Applicants respectfully request reconsideration of the present Application. Claims 1, 13-14, 16-32, and 34-46 have been amended herein. Claim 33 has been canceled. Care has been exercised to introduce no new matter. Claims 1-32 and 34-46 are pending and are in condition for allowance.

Support for amendments to the claims is found at least at the following citations to Applicants' Specification: support for amendments to claim 1 at page 6 generally, and page 9, lines 10-20; support for amendments to claims 13-14 at page 13, line 21 – page 14, line 13; and support for amendments to claims 16-46 at page 9, lines 21-27.

Objections

Claims 33-46 were objected to because amended independent Claim 32 is directed to "One or more computer-accessible media having instructions for performing a method...", but Claims 33-46 that depend directly or indirectly from claim 32 are directed toward "The method of Claim 32". Claims 33-46 have been amended to recite computer-accessible media. As such, Applicants respectfully request withdrawal of the objection to claims 33-46.

Rejections based on 35 U.S.C. § 101

Claims 1-46 were rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 has been amended to recite a "computer-implemented method performed on a first computer" and said first computer provides measuring and comparing of the performance of a listing. As such, claim 1 is tied to the particular machine or apparatus of the first computer both within the preamble and the body of the claim. Further, the first computer provides the functions of measuring and comparing which must be provided

for the method of claim 1 to be carried out. Thus, the involvement of the first computer in the method of claim 1 is essential to the method and is thus, not merely providing insignificant extra-solution activities.

Accordingly, Applicants respectfully submit that claim 1, as currently amended, is directed to statutory subject matter under 35 U.S.C. § 101. Withdrawal of the 35 U.S.C. § 101 rejection thereof is requested.

Claims 2-15 depend either directly or indirectly form claim 1. As such, Applicants respectfully submit that claims 2-15 are also directed to statutory subject matter for at least the reason of their dependency. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 2-15.

Claims 16-46 have been amended to recited computer-readable media and computer-accessible media having computer-executable instructions. As such, claims 16-46, as amended, are not process claims, but rather are product claims directed to media, and therefore comprise statutory subject matter. *See MPEP* § 2106.01. Accordingly, Applicants request withdrawal of the 35 U.S.C. § 101 rejection of claims 16-46.

Rejections based on 35 U.S.C. § 102(e)

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdeggal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 19133, 1920 (Fed. Cir. 1989); *see also*, MPEP § 2131.

Claims 1-46 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kamangar et al., U.S. Publication No. 2003/0046161 (hereinafter "Kamangar").

<u>Independent Claim 1</u>

Independent claim 1, as currently amended, generally recites a method for optimizing placement of a search result listing displayed on a Web page. A computer measures an actual performance of a listing located in a search results Web page. The actual performance includes a click-through rate (CTR) and/or context of the listing. An expected performance, which includes a user defined CTR and context of the listing, is assigned for the listing based on the listing's location when it is displayed in a search results Web page. The computer compares the actual performance to the expected performance for the listing. The listing is then either promoted such that it is displayed in a more prominent location in the search results Web page, or is demoted and displayed at a less prominent location in the search results Web page based on the comparison of the actual and expected performance.

As such, the method of independent claim 1 promotes and demotes a listing based on the listing's own performance with respect to a performance expectation determined by a user. The listing's promotion or demotion is not dependent on the performance of any other listing. Thus, where a listing's performance exceeds the expected performance the listing is promoted and where the listing's performance fails to meet the expected performance level the listing is demoted. The promotion and demotion of other listings is determined by comparing each of the other listings individual actual performance to their individual expected performance.

Additionally, dependent claims 13 and 14 depend from independent claim 1 and provide additional limitations with respect to promoting and demoting a set of listings. Two or more listings may be grouped together to form a set. *Applicants' Specification* at page 13, lines

21-22.   The set of listings may then be promoted or demoted based on the performance of the set as a whole. *Id.* Various methods of generating an actual performance measurement of the set based on the individual listings in the set are described. *Id.* at page 13, line 21 – page 15, line 12. However, the set is promoted and demoted as a set and thus, all of the member listings of the set are equally promoted or demoted with the set. *Id.*

In contrast, Kamangar describes a method for ordering advertisements based on performance information. *See Title of Kamangar.* Accordingly, a list of candidate ads is obtained and performance parameters for the ads are identified. *Kamangar* at ¶ [0040]. A score is determined for each of the candidate ads based on the performance parameters. *Id.* at ¶ [0043]. The ads are then ordered based on their score. *Id.* The ads are then selected for display and located in a search results Web page for display based on their score ranking. *Id.* at ¶ [0049].

As such, by Kamangar the ads are promoted or demoted based on a comparison of their performance to that of the other ads in the list of candidate ads, and not based on an individual comparison of the ads performance against an expected performance for the ad. Further, the list of candidate ads (or the set of candidate ads described at ¶ [0033] of Kamangar) is not promoted or demoted as a set. The list is used to provide a group of ads that can be compared to one another to determine a ranking of the ads with respect to one another.

Further, by Kamangar more than one advertisement is required for the methods to be useful. Ranking a single ad against itself under Kamangar would provide no input or useful information as to where or how the ad should be displayed in a search results Web page. Conversely, only a single listing is necessary for implementations of the method of independent claim 1. According to independent claim 1, a single listing's actual performance data is

compared to the expected performance for the listing and the single listing promoted or demoted based thereon.

Additionally, Kamangar describes "expected user interest in the ad" as a performance parameter at ¶ [0040]. As described by Kamangar, such a parameter would only be used to compare an expected user interest in a first ad to an expected user interest in a second ad in order to provide a ranking of the first and second ads with respect to the parameter. The parameter may be joined with other parameters to generate a score for the first ad and the second ad which can then be compared. Such is distinctly different that Applicants' invention in which expected performance parameter values of a first listing are compared to actual performance parameter values for the first listing.

Further, independent claim 1 recites "a user-defined expected CTR." The user in the context of independent claim 1 is a publisher of a Web page displaying the listing, an advertiser providing the listing, or another developer responsible for placement or tracking of listings. As such, a "user" (as referred to by Kamangar with respect to the expected user interest in an ad performance parameter) that navigates to the web page, views the advertisement, and possibly selects the advertisement is not the publisher or advertiser referred to in independent claim 1, and such a user has no input or effect on the expected performance. Such a user does affect the actual performance of the advertisement.

Accordingly, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of independent claim 1. Moreover, Kamangar fails to show the identical invention in as complete detail as contained in the claim. Thus, it is respectfully submitted that independent claim 1, as amended herein, is not anticipated by

Kamangar. Therefore, withdrawal of the 35 U.S.C. § 102 rejection of independent claim 1 is respectfully requested.

Each of claims 2-15, depends either directly or indirectly, from amended independent claim 1. As such, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of these claims for at least the above-cited reasons. Accordingly, withdrawal of the 35 U.S.C. § 102 rejection of claims 2-15 is respectfully requested.

Independent Claim 16

Independent Claim 16, as currently amended, generally recites computer-readable media for performing a search results optimization system. The system includes a performance measurement process to measure an actual performance of a listing appearing in a search results Web page against a user-defined expected performance level. A listing placement process to promote the listing to a more prominent location when the actual performance measures higher than the expected performance level, and to demote the listing to a less prominent location when the actual performance measures lower than the expected performance level is also included. A displaying process displays the listing at the more prominent location or at the less prominent location.

As described previously, Kamangar describes a method for ordering advertisements based on performance information. *See Title of Kamangar.* Accordingly, a list of candidate ads is obtained and performance parameters for the ads are identified. *Kamangar* at ¶ [0040]. A score is determined for each of the candidate ads based on the performance parameters. *Id.* at ¶ [0043]. The ads are then ordered based on their score. *Id.* The ads are then selected for display and located in a search results Web page for display based on their score

ranking. *Id.* at ¶ [0049]. As such, by Kamangar the ads are promoted or demoted based on a comparison of their performance to that of the other ads in the list of candidate ads, and not based on an individual comparison of the ads performance against an expected performance for the ad.

Further, by Kamangar more than one advertisement is required for the methods to be useful. Ranking a single ad against itself under Kamangar would provide no input or useful information as to where or how the ad should be displayed in a search results Web page. Conversely, only a single listing is necessary for implementations of the method of independent claim 16. According to independent claim 16, a single listing's actual performance data can be compared to the expected performance for the listing and the single listing promoted or demoted based thereon.

Additionally, Kamangar describes "expected user interest in the ad" as a performance parameter at ¶ [0040]. As described by Kamangar, such a parameter would only be used to compare an expected user interest in a first ad to an expected user interest in a second ad in order to provide a ranking of the first and second ads with respect to the parameter. The parameter may be joined with other parameters to generate a score for the first ad and the second ad which can then be compared. Such is distinctly different that Applicants' invention in which expected performance parameter values of a first listing are compared to actual performance parameter values for the first listing.

Further, independent claim 16 recites "a user-defined expected CTR." The user in the context of independent claim 16 is a publisher of a Web page displaying the listing, an advertiser providing the listing, or another developer responsible for placement or tracking of listings. As such, a "user" (as referred to by Kamangar with respect to the expected *user* interest

in an ad performance parameter) that navigates to the web page, views the advertisement, and possibly selects the advertisement is not the publisher or advertiser referred to in independent claim 16, and such a user has no input or effect on the expected performance. Such a user does affect the actual performance of the advertisement.

Accordingly, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of independent claim 16. Moreover, Kamangar fails to show the identical invention in as complete detail as contained in the claim. Thus, it is respectfully submitted that independent claim 16, as amended herein, is not anticipated by Kamangar. Therefore, withdrawal of the 35 U.S.C. § 102 rejection of independent claim 16 is respectfully requested.

Each of claims 17-25, depends either directly or indirectly, from amended independent claim 16. As such, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of these claims for at least the above-cited reasons. Accordingly, withdrawal of the 35 U.S.C. § 102 rejection of claims 17-25 is respectfully requested.

Independent Claim 26

Independent claim 26, as currently amended, generally recites computer-readable media having computer-executable instructions for performing a method for facilitating the optimal placement of search result listings in a search result user interface. A listing is placed in a search results Web page based on an expected click-through rate (CTR). An actual CTR of the listing is captured. The actual CTR is normalized based on the location. The listing is promoted to a more desirable location when the normalized CTR is better than the expected CTR, and is demoted to a less desirable location when the normalized CTR is worse than the expected CTR.

Kamangar, as discussed above, describes a method for ordering advertisements based on performance information. *See Title of Kamangar*. Accordingly, a list of candidate ads is obtained and performance parameters for the ads are identified. *Kamangar* at ¶ [0040]. A score is determined for each of the candidate ads based on the performance parameters. *Id.* at ¶ [0043]. The ads are then ordered based on their score. *Id.* The ads are then selected for display and located in a search results Web page for display based on their score ranking. *Id.* at ¶ [0049]. As such, by Kamangar the ads are promoted or demoted based on a comparison of their performance to that of the other ads in the list of candidate ads, and not based on an individual comparison of the ads performance against an expected performance for the ad.

Further, by Kamangar more than one advertisement is required for the methods to be useful. Ranking a single ad against itself under Kamangar would provide no input or useful information as to where or how the ad should be displayed in a search results Web page. Conversely, only a single listing is necessary for implementations of the method of independent claim 26. According to independent claim 26, a single listing's actual performance data can be compared to the expected performance for the listing and the single listing promoted or demoted based thereon.

Additionally, Kamangar describes "expected user interest in the ad" as a performance parameter at ¶ [0040]. As described by Kamangar, such a parameter would only be used to compare an expected user interest in a first ad to an expected user interest in a second ad in order to provide a ranking of the first and second ads with respect to the parameter. The parameter may be joined with other parameters to generate a score for the first ad and the second ad which can then be compared. Such is distinctly different that Applicants' invention in which

expected performance parameter values of a first listing are compared to actual performance parameter values for the first listing.

Accordingly, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of independent claim 26. Moreover, Kamangar fails to show the identical invention in as complete detail as contained in the claim. Thus, it is respectfully submitted that independent claim 26, as amended herein, is not anticipated by Kamangar. Therefore, withdrawal of the 35 U.S.C. § 102 rejection of independent claim 26 is respectfully requested.

Each of claims 27-31, depends either directly or indirectly, from amended independent claim 26. As such, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of these claims for at least the above-cited reasons. Accordingly, withdrawal of the 35 U.S.C. § 102 rejection of claims 27-31 is respectfully requested.

Independent Claim 32

Independent Claim 32, as currently amended, generally recites computer-readable media having computer-executable instructions thereon that, when executed perform a method for displaying on a display device a search result Web page for a search term query. The search result Web page includes at least two sections in which to display a search result listing. A first section is located in a more prominent area of the display device and a second section located in a less prominent area of the display device. An expected performance of a search result listing is assigned based on a user-defined expected click-through rate (CTR) that is adjusted based on a location of the section in the Web page in which the listing appears. An actual performance of the search result listing is measured. The actual performance is compared to the expected

performance. The listing is moved to the more prominent first section when the actual performance is better than the expected performance or to the less prominent second section when the actual performance is poorer than the expected performance. The listing is displayed in the selected section.

As described previously, Kamangar describes a method for ordering advertisements based on performance information. *See Title of Kamangar.* Accordingly, a list of candidate ads is obtained and performance parameters for the ads are identified. *Kamangar* at ¶ [0040]. A score is determined for each of the candidate ads based on the performance parameters. *Id.* at ¶ [0043]. The ads are then ordered based on their score. *Id.* The ads are then selected for display and located in a search results Web page for display based on their score ranking. *Id.* at ¶ [0049]. As such, by Kamangar the ads are promoted or demoted based on a comparison of their performance to that of the other ads in the list of candidate ads, and not based on an individual comparison of the ads performance against an expected performance for the ad.

Further, by Kamangar more than one advertisement is required for the methods to be useful. Ranking a single ad against itself under Kamangar would provide no input or useful information as to where or how the ad should be displayed in a search results Web page. Conversely, only a single listing is necessary for implementations of the method of independent claim 32. According to independent claim 32, a single listing's actual performance data can be compared to the expected performance for the listing and the single listing promoted or demoted based thereon.

Independent claim 32 has also been amended to recite additional limitations that describe increasing or decreasing the expected performance with respect to the placement of a

listing. Kamangar does not describe using or assigning an expected performance to a listing as recited by independent claim 32, and as such, does not describe increasing or decreasing an expected performance based on a listings placement.

Additionally, Kamangar describes "expected user interest in the ad" as a performance parameter at ¶ [0040]. As described by Kamangar, such a parameter would only be used to compare an expected user interest in a first ad to an expected user interest in a second ad in order to provide a ranking of the first and second ads with respect to the parameter. The parameter may be joined with other parameters to generate a score for the first ad and the second ad which can then be compared. Such is distinctly different that Applicants' invention in which expected performance parameter values of a first listing are compared to actual performance parameter values for the first listing.

Further, independent claim 32 recites "a user-defined expected CTR." The user in the context of independent claim 32 is a publisher of a Web page displaying the listing, an advertiser providing the listing, or another developer responsible for placement or tracking of listings. As such, a "user" (as referred to by Kamangar with respect to the expected *user* interest in an ad performance parameter) that navigates to the web page, views the advertisement, and possibly selects the advertisement is not the publisher or advertiser referred to in independent claim 32, and such a user has no input or effect on the expected performance. Such a user does affect the actual performance of the advertisement.

Accordingly, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of independent claim 32. Moreover, Kamangar fails to show the identical invention in as complete detail as contained in the claim. Thus, it is respectfully submitted that independent claim 32, as amended herein, is not anticipated by

Kamangar. Therefore, withdrawal of the 35 U.S.C. § 102 rejection of independent claim 32 is respectfully requested.

Each of claims 33-46, depends either directly or indirectly, from amended independent claim 32. As such, it is respectfully submitted that Kamangar fails to describe, either expressly or inherently, each and every element of these claims for at least the above-cited reasons. Accordingly, withdrawal of the 35 U.S.C. § 102 rejection of claims 33-46 is respectfully requested.

CONCLUSION

For at least the reasons stated above, claims 1-32 and 34-46 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or areed@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

/Aaron S. Reed/

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